

AMENDED IN ASSEMBLY MARCH 27, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2234

Introduced by Assembly Member Wiggins

February 24, 2000

An act to amend Sections 10167, 10167.2, 10167.3, 10167.7, 10167.9, 10167.10, 10167.11, and 10167.12 of the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 2234, as amended, Wiggins. Prepaid rental listing services.

The Real Estate Law provides for the regulation and licensing of prepaid rental listing services by the Real Estate Commissioner. A willful violation of these provisions is a crime.

Existing law imposes various requirements on prepaid rental listing services, and among other things requires a contract for prepaid rental listing services to contain various provisions, including a requirement for the service to refund a prospective tenant's fee under certain circumstances, and provides a remedy in small claims court if the fee is not refunded when required.

This bill would modify the definition of "prepaid rental listing service" and provide that a contract for those services may be provided by the licensee to the prospective tenant and signed in electronic form, as specified. This bill would require the commissioner to establish an administrative claims

procedure as an informal alternative to the court procedure. This bill would increase licensing fees payable to the commissioner by prepaid rental listing services, *would* increase the required bonding requirement from \$2,500 to \$25,000, and ~~provide for an annual increase in the amount of~~ *would require that the amount of the service charge to a prospective tenant that a licensee is not required to refund to a prospective tenant may retain be adjusted annually, as specified, by the Department of Real Estate.* This bill would make other related changes to these regulatory provisions.

Because a violation of the bill's requirements would be a crime, this bill would impose a state-mandated local program by expanding the definition of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10167 of the Business and
2 Professions Code is amended to read:
3 10167. The definitions used in this section shall govern
4 the construction and terms as used in this article:
5 (a) "Prepaid rental listing service" means the business
6 of supplying prospective tenants with access to listings of
7 residential real properties for tenancy, by publication or
8 otherwise, pursuant to an arrangement under which the
9 prospective tenants are required to (1) pay an advance
10 or contemporaneous fee specifically to access listings or
11 (2) purchase any other product or service in order to gain
12 access to listings, but which does not otherwise involve
13 the negotiation of rentals by the person conducting the
14 service. "Prepaid rental listing service" does not include
15 the business of providing roommate referral information

1 designed to assist persons in locating a roommate who
2 meets various selection criteria.

3 (b) “Licensee” means a person licensed to conduct a
4 prepaid rental listing service or a person engaged in the
5 business of a prepaid rental listing service under a real
6 estate broker license.

7 (c) “Location” means the place, other than the main
8 or branch office of a real estate broker, where a prepaid
9 rental listing service business is conducted.

10 (d) “Designated agent” means the person who is in
11 charge of the business of a prepaid rental listing service
12 at a given location.

13 (e) “Fee” means the charge required by a licensee for
14 access to listings of vacant residential real properties for
15 tenancy.

16 (f) “Service charge” means the amount of the fee that
17 a licensee may retain if a prospective tenant finds housing
18 through a source other than the listings supplied by the
19 licensee.

20 SEC. 2. Section 10167.2 of the Business and
21 Professions Code is amended to read:

22 10167.2. (a) It is unlawful for any person to engage in
23 the business of a prepaid rental listing service unless
24 licensed in that capacity or unless licensed as a real estate
25 broker.

26 (b) The requirements of this article apply only to the
27 provision of access to listings of residential real properties
28 for tenancy by prepaid rental listing services. Except if
29 expressly provided otherwise in this article, the
30 requirements of this article do not apply to any other
31 goods or services sold by a prepaid rental listing service
32 as long as purchase of those goods or services is not
33 required to gain access to those listings *and as long as the*
34 *purchase of those goods or services is not included in the*
35 *same contract as the contract to provide access to those*
36 *listings.*

37 SEC. 3. Section 10167.3 of the Business and
38 Professions Code is amended to read:

39 10167.3. (a) A separate application for a license as a
40 prepaid rental listing service shall be made in writing for

1 each location to be operated by a licensee other than a
2 real estate broker. Each application shall be on forms
3 provided by the department, shall be signed by the
4 applicant, and shall be accompanied by a two hundred
5 dollar (\$200) application fee for the first location, and a
6 fifty dollar (\$50) application fee for each additional
7 location of the applicant.

8 Applications to add or eliminate locations during the
9 term of a license shall be on forms prescribed by the
10 department. A fifty dollar (\$50) application fee for the
11 remainder of a license term for each location to be added
12 shall accompany the application.

13 (b) A real estate broker may provide a prepaid rental
14 listing service at a licensed office for the conduct of his or
15 her real estate brokerage business if the business at the
16 office is conducted under the immediate supervision of
17 the broker or of a real estate salesperson licensed to, and
18 acting on behalf of, the broker.

19 SEC. 4. Section 10167.7 of the Business and
20 Professions Code is amended to read:

21 10167.7. Except as provided in Section 10167.8, each
22 licensee shall provide to the department, and at all times
23 maintain in force, a bond in the amount of twenty-five
24 thousand dollars (\$25,000) for each location. A licensee
25 that has provided a bond in a lesser amount pursuant to
26 requirements then in effect shall not be required to
27 provide a bond in the amount of twenty-five thousand
28 dollars (\$25,000) until the time that the licensee's license
29 is subject to renewal. The bond may be in the form of a
30 corporate surety bond, or a cash deposit. A cash deposit
31 may be deposited by the licensee in an interest-bearing
32 account assigned to the commissioner, with interest
33 earned thereon payable to the licensee. The bond or cash
34 deposit may be utilized by the commissioner for the
35 benefit of any unsatisfied judgment creditor in an action
36 pursuant to subdivision (e) of Section 10167.10, or for the
37 benefit of any successful claimant in a claim brought
38 pursuant to subdivision (f) of Section 10167.10.

39 SEC. 5. Section 10167.9 of the Business and
40 Professions Code is amended to read:

1 10167.9. (a) Prior to the acceptance of a fee for
2 listings, or for purchase of goods or services required to
3 gain access to listings, a licensee shall provide the
4 prospective tenant with a proposed written contract,
5 either on paper or in electronic form, which shall include
6 at least the following:

7 (1) The name of the licensee and the addresses and
8 telephone numbers of the principal office or location of
9 the licensee and of the location, or branch office of a real
10 estate broker, providing the listing to the prospective
11 tenant.

12 (2) Acknowledgment of receipt of the fee, including
13 the amount.

14 (3) A description of the service to be performed by the
15 licensee, including significant conditions, restrictions,
16 and limitations where applicable.

17 (4) The prospective tenant's specifications for the
18 rental property, including, but not limited to:

19 (A) Type of structure, including, but not limited to,
20 detached single-family home, apartment, or duplex.

21 (B) Location by commonly accepted residential area
22 name, by designation of boundary streets, or by any other
23 manner affording a reasonable means of identifying
24 locations acceptable to the prospective tenant.

25 (C) Furnished or unfurnished.

26 (D) Number of bedrooms required.

27 (E) Maximum acceptable monthly rental.

28 (5) The contract expiration date, which shall not be
29 later than 90 days from the date of execution of the
30 contract.

31 (6) A clause setting forth the right to a full or partial
32 refund of the fee paid in advance as provided in Section
33 10167.10.

34 (7) The signature of the licensee or of the designated
35 agent, real estate salesperson, or employee acting on
36 behalf of the licensee. The signature of any person,
37 including any signature required by the terms of the
38 contract to be provided by the prospective tenant, may
39 be provided in any electronic form that provides a
40 reasonable method of indicating that the individual

1 whose signature is required authorized the contract to be
2 signed in that electronic form.

3 (8) A clause in bold type letters outlining the small
4 claims court remedy available to the prospective tenant,
5 and the administrative claims procedure available
6 pursuant to subdivision (f) of Section 10167.10 after the
7 commissioner has established that procedure.

8 (b) The original of each contract shall be retained by
9 the licensee for a period of not less than six months from
10 the date of termination of the contract during which time
11 the contract shall be subject to examination by a duly
12 authorized representative of the commissioner. For
13 purposes of this subdivision, the “original” of a contract
14 executed in electronic form shall be either the copy of the
15 contract stored in digital media or a paper printout of that
16 contract.

17 (c) The form of contract proposed to be used by a
18 licensee to effect compliance with this section shall be
19 filed with the department prior to use. Any modification
20 of a form previously filed with the department, including
21 a change in the name or business address of the licensee,
22 shall also be filed prior to use, if the modification affects
23 the rights and obligations of the parties to the contract or
24 directly affects the contract’s compliance with the
25 express requirements of this article. The department shall
26 withhold the issuance or renewal of a license until the
27 department has approved the contract, but the
28 department shall not withhold its approval on the basis of
29 issues that do not relate to the rights and obligations of the
30 parties to the contract or that do not directly relate to
31 compliance with the express requirements of this article.

32 (d) Notwithstanding any other provision of law, a
33 contract for prepaid rental listing services executed in
34 electronic form, and signed in any electronic form that
35 provides a reasonable method of indicating that the
36 individual whose signature is required authorized the
37 contract to be signed in electronic form, shall be valid to
38 the same extent as an executed written contract.

39 SEC. 6. Section 10167.10 of the Business and
40 Professions Code is amended to read:



1 10167.10. (a) (1) A licensee shall refund in full the
2 advance fee paid by a prospective tenant if the licensee
3 does not, within five days after execution of the contract,
4 supply at least three rental properties then available to
5 the prospective tenant and meeting the specifications of
6 the contract, unless the prospective tenant obtains a
7 rental through the services of the licensee.

8 (2) A licensee will be deemed to have supplied
9 information meeting the specifications of the prospective
10 tenant if the information supplied meets the contract
11 specifications with reference to: (i) type of structure; (ii)
12 designated area; (iii) furnished or unfurnished; (iv)
13 number of bedrooms; (v) maximum rental; and (vi) any
14 other specification expressly set forth in the contract. A
15 demand for the return of the fee shall be made by or on
16 behalf of the prospective tenant within 10 days following
17 the expiration of the five-day period referred to above by
18 delivery or by mailing by registered or certified mail to
19 the address of a location, or branch office of a real estate
20 broker, set forth in the contract.

21 (b) (1) Except as provided in paragraph (3), a
22 licensee shall refund any amount over and above the sum
23 of a fifty dollar (\$50) service charge to the prospective
24 tenant if the prospective tenant obtains a rental other
25 than through the services of the licensee during the term
26 of the contract or does not obtain a rental, provided that
27 the prospective tenant demands a return of that part of
28 the fee within 10 days after the expiration of the contract.
29 ~~For purposes of this subdivision, a prospective tenant will~~
30 ~~be considered to have obtained a rental through the~~
31 ~~services of the licensee if the prospective tenant obtains~~
32 ~~a rental in the same building or complex to which the~~
33 ~~licensee referred the tenant, even if a listing for the~~
34 ~~particular rental unit obtained was not provided by the~~
35 ~~licensee.~~

36 (2) Within 10 days of receipt from the prospective
37 tenant of reasonable documentation of the prospective
38 tenant's new rental or of the fact that the prospective
39 tenant did not move, such as a lease, rental agreement, or
40 utility bill, with sufficient information to verify that the

1 new rental was not obtained through the services of the
2 licensee or that the prospective tenant did not move, the
3 licensee shall refund any amount over and above the sum
4 of a fifty dollar (\$50) service charge to the prospective
5 tenant. *A refund shall not be denied to a person who*
6 *credibly affirms to the licensee that the person did not*
7 *obtain a rental through the services of the licensee and*
8 *who credibly affirms that, after making reasonable efforts*
9 *to provide reasonable documentation of this fact, the*
10 *person was unable to do so.*

11 ~~(3) Beginning January 1, 2002, the amount of the~~
12 ~~allowable service charge shall be increased annually by 5~~
13 ~~percent, rounded up to the nearest whole dollar, so that~~
14 ~~the limitation is always expressed in terms of whole~~
15 ~~dollars.~~

16 (3) *On or before January 1, 2002, and annually*
17 *thereafter, the department shall, by regulation, adjust the*
18 *amount of the allowable service charge to reflect the rate*
19 *of inflation from the previous year, as measured by the*
20 *Consumer Price Index or other method of measuring the*
21 *rate of inflation which the department determines is*
22 *reliable and generally accepted.*

23 (c) Each contract shall contain provisions that shall
24 read as follows unless different language shall have been
25 approved in writing by the department prior to use:
26

27 “RIGHT TO REFUND

28 (Full capital letters, bold face, or italicized)

29 If, within five days after payment of an advance fee, the
30 licensee has not supplied the prospective tenant with at
31 least three available rental properties meeting the
32 specifications of the contract as to (i) type of structure;
33 (ii) designated area; (iii) furnished or unfurnished; (iv)
34 number of bedrooms; (v) maximum rental; and (vi) any
35 other specification expressly set forth in the contract, the
36 full amount of the fee paid shall be refunded to the
37 prospective tenant upon presentation of evidence of that
38 failure within 10 days after the expiration of the five-day
39 period. The prospective tenant is not entitled to a refund

1 if the prospective tenant obtains a rental through the
2 services of the licensee.

3 If the prospective tenant obtains a rental other than
4 through the services of the licensee during the term of
5 this contract or if the prospective tenant does not obtain
6 a rental through the services of the licensee during the
7 term of the contract, the licensee shall refund the fee
8 received in excess of a (insert applicable limit pursuant
9 to subdivision (b) of Section 10167.10 of the Business and
10 Professions Code) service charge to the prospective
11 tenant within 10 days after the prospective tenant
12 supplies reasonable documentation of the prospective
13 tenant's new rental or of the fact that the prospective
14 tenant did not move, such as a lease, rental agreement, or
15 utility bill, with sufficient information to verify that the
16 new rental was not obtained through the services of the
17 licensee or that the prospective tenant did not move.

18 To be entitled to a refund in excess of the service
19 charge, the prospective tenant must mail or deliver the
20 demand for refund not later than 10 days after expiration
21 of this contract, and must supply reasonable
22 documentation of the prospective tenant's new rental or
23 of the fact that the prospective tenant did not move, such
24 as a lease, rental agreement, or utility bill, with sufficient
25 information to verify that the new rental was not
26 obtained through the services of the licensee or that the
27 prospective tenant did not move. The documentation
28 may be supplied after the demand for a refund is mailed
29 or delivered, provided that it is supplied within a
30 reasonable time after it becomes available.”

31

32 (d) This section shall not apply to a person purchasing
33 rental information for a purpose other than that of
34 locating a rental unit for personal use or the use of a
35 designated person.

36 (e) If the licensee fails to make a refund as provided
37 in this section and if the denial or delay in making the
38 refund is found to have been done in bad faith, a court of
39 appropriate jurisdiction, including a small claims court, or
40 the commissioner pursuant to subdivision (f), shall be



1 empowered to award damages to the plaintiff in an
2 amount not to exceed one thousand dollars (\$1,000) in
3 addition to actual damages sustained by the plaintiff. If
4 the licensee refuses or is unable to pay the damages
5 awarded by the court or the commissioner, the award
6 may be satisfied out of the security required under
7 Section 10167.7.

8 (f) (1) The commissioner shall, by regulation,
9 establish an administrative claims procedure for
10 evaluating claims by prospective tenants alleging that a
11 licensee has failed to make a refund as provided in this
12 section.

13 (2) The purpose of the procedure shall be to provide
14 a convenient, informal, expedited method of validating
15 claims by prospective tenants and compensating
16 claimants for valid claims.

17 (3) A decision of the commissioner pursuant to this
18 subdivision may be appealed to a court of competent
19 jurisdiction.

20 (4) The administrative claims procedure shall ensure
21 that the licensee alleged to have failed to make a refund
22 receives notice of the claim, and has an opportunity to be
23 heard by the commissioner and an opportunity to appeal
24 the commissioner's decision to a court of appropriate
25 jurisdiction.

26 SEC. 7. Section 10167.11 of the Business and
27 Professions Code is amended to read:

28 10167.11. It shall be a violation of this article for any
29 licensee or any employee or agent of a licensee to do the
30 following:

31 (a) Make, or cause to be made, any false, misleading,
32 or deceptive advertisements or representations
33 concerning the services that the licensee will provide to
34 prospective tenants.

35 (b) Refer a property to a prospective tenant knowing
36 or having reason to know that:

37 (1) The property does not exist or is unavailable for
38 tenancy.

(2) The property has been described or advertised by or on behalf of the licensee in a false, misleading, or deceptive manner.

(3) The licensee has not confirmed the availability of the property for tenancy during the ~~seven-day~~ *four-day* period immediately preceding dissemination of the listing information. However, it shall not be a violation to refer a property to a prospective tenant during a period of from ~~seven to 10~~ *five to seven* days after the most recent confirmation of the availability of the property for rental if the licensee has made a good faith effort to confirm availability within the stated ~~seven-day~~ *four-day* period, and if the most recent date of confirmation of availability is set forth in the referral.

(4) The licensee has not obtained written or oral permission to list the property from the property owner, manager, or other authorized agent.

SEC. 8. Section 10167.12 of the Business and Professions Code is amended to read:

10167.12. (a) The commissioner may suspend or revoke the license of a licensee or the license of the licensee to operate at one or more locations for either of the following:

(1) A violation of this article by a licensee or by an employee or agent, including a designated agent, of the licensee.

(2) A conviction of a licensee, or a designated agent, or of an officer, director, or owner of 25 percent or more of the shares of a corporate licensee for a crime which is substantially related to the qualifications, functions, or duties of a prepaid rental listing service licensee.

(b) For the purpose of determining whether grounds exist for suspending or revoking the license of a licensee, the commissioner shall hold a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred

1 because this act creates a new crime or infraction,
2 eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section
4 17556 of the Government Code, or changes the definition
5 of a crime within the meaning of Section 6 of Article
6 XIII B of the California Constitution.

